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SUBJECT: VISA BANS: A COMPARISON OF U.S. AND E.U. POLICIES  
IN BURMA

1. SUMMARY: An analysis of American and E.U. visa policies toward Burmese "who formulate, implement, or benefit from policies that impede Burma's transition to democracy" shows that American and E.U. consular officials refuse to issue visas to more or less the same people, but sometimes for different reasons. Although the two approaches yield similar results, the American system is more flexible and easier to implement. END SUMMARY.

The U.S. Visa Ban

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2. A 1996 Presidential Proclamation bans entry into the United States, as immigrant or non-immigrants, of senior Burmese government officials and "other persons who formulate, implement, or benefit from policies that impede Burma's transition to democracy" and their immediate family members. Such persons are ineligible to receive visas under the Immigration and Nationality Act (INA), Section 212(f).

3. Individuals in the following categories (and their immediate families) are subject to INA Section 212(f):  
-- State Peace and Development Council (SPDC) members;  
-- Government ministers;  
-- Senior officials of the Union Solidarity and Development Association (USDA);  
-- Other senior government officials above the rank of colonel or director general.

These categories overlap to a large extent. For example, the Minister of Defense is an SPDC member and USDA senior officials are either SPDC members or cabinet ministers. Some ministers and all SPDC members are generals.

4. These categories are enumerated for ease in implementation; however, the ban is not limited to individuals who fall within these categories. Any other person "who formulates, implements, or benefits from policies that impede Burma's transition to democracy" could be found ineligible to receive a visa under Section 212(f).

5. For practical reasons, the U.S. ban does not identify specific individuals, but rather, categories of applicants ineligible under 212(f). U.S. embassies and consulates accept visa applications from any applicant physically present in their consular districts. Consular sections around the world could not be expected to recognize specific individuals. Any Burmese applicant who lists a rank above colonel or a title above director general on his/her visa application should be refused, regardless of where they apply. Also, the Burmese government often makes dramatic personnel changes at the senior levels, which may or may not be widely or promptly reported. Maintaining an up-to-date list of individuals ineligible under Section 212(f) would be time-consuming and difficult.

The E.U. Visa Ban

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6. The E.U. annually develops a list of specific Burmese officials who are ineligible to receive visas. Their list could be divided into the following categories:

-- SPDC members;  
-- Potential SPDC members;  
-- Regional commanders;  
-- Cabinet ministers (includes deputy ministers);

7. All of the individuals listed by the British Embassy in July 2002 fall into one or more of the categories used to implement the U.S. visa ban. However, some Burmese officials that might fall into the U.S. catch-all category of "other senior government officials above the rank of colonel or director general" may not be specifically named on the E.U. list (e.g., not all generals are SPDC, regional commanders, or cabinet ministers).

The E.U. Proposal

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8. The E.U. proposes to expand their list to include senior members of the USDA and "certain other individuals who formulate, implement, or benefit from policies that impede

Burma/Myanmar's transition to democracy, and their families." This last category would include senior officials of the Union of Myanmar Economic Holdings, Limited (UMEHL) and companies owned by UMEHL, prominent bankers and other "cronies."

19. Their proposed wording is virtually identical to the wording of the Presidential Proclamation. Thus, individual businessmen specified on the E.U. list could also be found ineligible to receive a visa under INA Section 212(f). Although we might, in fact, refuse the same people, our justification would be slightly different. For example, many UMEHL officials are retired generals and/or ministers who the government rewarded for their services to the regime. Whereas the E.U. might refuse such UMEHL officials as "cronies," we might refuse them for having been career beneficiaries of regime policies.

10. On a practical level, identifying all persons who "benefit from policies that impede Burma/Myanmar's transition to democracy" is an impossible task. Such a list could only include the most conspicuous beneficiaries of government policies. "Behind-the-scene" beneficiaries could travel freely. Even if Western diplomats were able to develop a comprehensive list of beneficiaries/cronies, it would need to be constantly updated. For example, prominent private bankers who many would have considered "cronies" three months ago, might not be considered so today. In fact, several of the bankers/businessmen on the E.U.'s proposed list might now be ineligible under INA Section 214(b) (presumed immigrant intent), rather than under Section 212(f).

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